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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 20010-4

12 **SYLVIA ANNE SHERRY**  
13 **215 Por La Mar Circle**  
**Santa Barbara, CA 93103**

**A C C U S A T I O N**

14 **Registered Nurse License No. 549696**

15 Respondent.  
16

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about November 12, 1998, the Board of Registered Nursing issued Registered  
24 Nurse License Number 549696 to Sylvia Anne Sherry (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on June 30, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states, in pertinent part, as follows:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

...

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . ."

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1           7.     Section 2762 of the Code states, in part:

2           "In addition to other acts constituting unprofessional conduct within the meaning of this  
3 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
4 chapter to do any of the following:

5           ...

6           (b) Use any controlled substance as defined in Division 10 (commencing with Section  
7 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
8 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
9 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
10 ability to conduct with safety to the public the practice authorized by his or her license.

11           (c) Be convicted of a criminal offense involving the prescription, consumption, or  
12 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
13 or the possession of, or falsification of a record pertaining to, the substances described in  
14 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
15 thereof. . . ."

16           8.     Section 490 of the Code states:

17           "(a) In addition to any other action that a board is permitted to take against a licensee, a  
18 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
19 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
20 or profession for which the license was issued.

21           (b) Notwithstanding any other provision of law, a board may exercise any authority to  
22 discipline a licensee for conviction of a crime that is independent of the authority granted under  
23 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
24 of the business or profession for which the licensee's license was issued.

25           (c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
26 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
27 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
28 the judgment of conviction has been affirmed on appeal, or when an order granting probation is

1 made suspending the imposition of sentence, irrespective of a subsequent order under the  
2 provisions of Section 1203.4 of the Penal Code.

3 (d) The Legislature hereby finds and declares that the application of this section has been  
4 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
5 554, and that the holding in that case has placed a significant number of statutes and regulations  
6 in question, resulting in potential harm to the consumers of California from licensees who have  
7 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
8 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
9 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not  
10 constitute a change to, but rather are declaratory of, existing law."

11 9. Section 493 of the Code states:

12 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
13 the department pursuant to law to deny an application for a license or to suspend or revoke a  
14 license or otherwise take disciplinary action against a person who holds a license, upon the  
15 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
16 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
17 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
18 and the board may inquire into the circumstances surrounding the commission of the crime in  
19 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
20 qualifications, functions, and duties of the licensee in question.

21 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
22 'registration.'"

23 10. California Code of Regulations, title 16, section 1444, states:

24 "A conviction or act shall be considered to be substantially related to the qualifications,  
25 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
26 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
27 safety, or welfare. . . ."

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1 COST RECOVERY

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 FIRST CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct / Dangerous Use of Alcohol)

8 12. Respondent is subject to disciplinary action under sections 2750, 2761, subdivision  
9 (a), and 2762, subdivision (b) of the Code, in that Respondent committed acts constituting  
10 unprofessional conduct by using alcoholic beverages to an extent or in a manner dangerous to  
11 herself, other persons, or the public or to the extent that such use of alcoholic beverages impaired  
12 her ability to conduct with safety to the public the practice authorized by her license. The  
13 circumstances are as follows:

14 A. On or about February 23, 2008, at about 6:34 p.m., Respondent was driving her  
15 vehicle at a high rate of speed, without her headlights on, and while intoxicated. Her blood  
16 alcohol level far exceeded the legal limit and her blood alcohol test sample indicated her blood  
17 alcohol level was 0.32%. While driving she broadsided another vehicle causing injury to the  
18 driver of the vehicle she hit. Respondent then fled the scene of the accident.

19 SECOND CAUSE FOR DISCIPLINE

20 (Conviction of Substantially Related Crimes)

21 13. Respondent is subject to disciplinary action under sections 2750, 2761, subdivision  
22 (f), 2765 and 490 of the Code, in conjunction with California Code of Regulations, title 16,  
23 section 1444, in that Respondent was convicted of crimes which are substantially related to the  
24 qualifications, functions and duties of a licensed registered nurse, as follows:

25 A. On or about February 2, 2007, Respondent was convicted by the Court on her plea of  
26 no contest to one misdemeanor count of violating Vehicle Code section 23152, subdivision (a),  
27 (driving under the influence of an alcoholic beverage), in Santa Barbara Superior Court Case No.  
28 1216445, entitled *People v. Sylvia Anne Sherry*. Respondent was placed on three years probation

1 upon terms and conditions of probation including completion of a three month first offender  
2 program and that she not drive while her license was suspended by the Department of Motor  
3 Vehicles.

4 B. On or about June 17, 2009, Respondent was convicted by the Court on her plea of no  
5 contest to one count of violating Vehicle Code section 23153, subdivision (b), (driving under the  
6 influence and while having a blood alcohol level of 0.08% or more), and one count of violating  
7 Vehicle Code section 20001, subdivision (a) (leaving the scene of an accident), in Santa Barbara  
8 Superior Court Case No. 1258076, entitled *People v. Sylvia Anne Sherry*. At the sentencing  
9 hearing, pursuant to Respondent's Penal Code section 17(b) motion, the felony charges were  
10 reduced to misdemeanors and Respondent was placed on 3 years probation upon terms and  
11 conditions of probation, including that she serve 120 days in jail.

12 THIRD CAUSE FOR DISCIPLINE

13 (Convictions Involving Alcohol)

14 14. Respondent is subject to disciplinary action under sections 2750, 2761, subdivision  
15 (a), and 2762, subdivision (c), of the Code, in that Respondent was convicted of crimes involving  
16 alcohol, as more fully set forth in paragraph 13, above.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Violation of Act)

19 15. Respondent is subject to disciplinary action pursuant to sections 2750 and 2761,  
20 subdivision (d), in that Respondent violated the provisions or terms of the Nursing Practice Act,  
21 or regulations adopted pursuant to it, as more fully set forth in paragraphs 12 through 14, above.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
24 and that following the hearing, the Board of Registered Nursing issue a decision:

25 1. Revoking or suspending Registered Nurse License Number 549696, issued to Sylvia  
26 Anne Sherry.

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2. Ordering Sylvia Anne Sherry to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 7/3/2009 for Stacie Benum  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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